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**STATE HEARING AND REQUEST FOR REVIEW  
STATE HEARING - GENERAL**

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**DIVISION 22 STATE HEARING AND REQUEST FOR REVIEW**

**CHAPTER 22-000 STATE HEARING - GENERAL**

**22-000 STATE HEARING - GENERAL 22-000**

- .1 The responsibility for providing a full and impartial hearing to the claimant rests jointly with the county and the state department.

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**HANDBOOK BEGINS HERE**

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- .11 The state department is responsible for the overall administration of the hearing process and the conduct of each hearing.

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**HANDBOOK ENDS HERE**

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- .12 Since the right to request a state hearing belongs to the claimant, the regulations in this chapter shall be interpreted in a manner which protects the claimant's right to a hearing.
- .13 Although the specific duties and responsibilities of each agency are set forth in the following regulations, these rules shall not be used to suppress the claimant's right to a hearing. For example, although the county shall justify its action when appropriate, the county shall not discourage the claimant from proceeding with the hearing request nor relinquish its responsibility to assist the claimant in this process. The administrative law judge shall conduct the hearing according to applicable procedures and the claimant shall be allowed to present evidence relevant to his/her own case.
- .14 The regulations in this chapter shall apply to all public social services programs subject to a state hearing.
- .15 Any part of these regulations which apply only to specific aid programs shall be so designated.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10051, 10553, 10554 and 10950, Welfare and Institutions Code and 45 CFR 205.10.

22-001	DEFINITIONS	22-001
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The following definitions shall apply wherever the terms are used throughout Division 22.

- a. (1) Adequate Notice - A written notice informing the claimant of the action the county intends to take, the reasons for the intended action, the specific regulations supporting such action, an explanation of the claimant's right to request a state hearing, and if appropriate, the circumstances under which aid will be continued if a hearing is requested, and for the AFDC Program, if the county action is upheld, that the aid paid pending must be repaid. In the Food Stamp Program, see Section 63-504.2.
- (2) Administrative Law Judge - A person designated by the Director and thereafter assigned by the Chief Administrative Law Judge to conduct state hearings and administrative disqualification hearings.

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**HANDBOOK BEGINS HERE**

The Administrative Law Judge shall prepare fair, impartial and independent decisions.

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- (3) Aid - For purposes of this Division "aid" includes all public social services programs subject to a state hearing.
- (A) Such public social services programs include, but are not limited to, Aid to Families with Dependent Children (AFDC), the State administered programs for recipients of SSI/SSP (Division 46), Refugee Resettlement Program (RRP), the Cuban/Haitian Entrant Program (CHEP), the Food Stamp Program (FS), the California Medical Assistance Program (Medi-Cal), the Transitional Child Care Program (TCC), the Social Services Programs described in Divisions 30 and 31 of the Manual of Policies and Procedures (MPP), Aid for the Adoption of Children Program (AAC), Adoption Assistance Program (AAP), and Multipurpose Senior Services Program (MSSP).
- (4) Alternate Decision - A decision issued by the Director which differs from the Administrative Law Judge's proposed decision. See Section 22-062.

<b>22-001</b>	<b>DEFINITIONS (Continued)</b>	<b>22-001</b>
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- (5) Authorized Representative - An individual or organization that has been authorized by the claimant or designated by the Administrative Law Judge or Department pursuant to Sections 22-085 and 22-101 to act for the claimant in any and all aspects of the state hearing or administrative disqualification hearing.

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**HANDBOOK BEGINS HERE**

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- (A) An authorized representative may include legal counsel, a relative, a friend, or other spokesperson.

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- (B) Any references to claimant shall also apply to the authorized representative unless otherwise stated.

- (C) The claimant shall not be required to designate an authorized representative and may represent him/herself at all stages of the hearing process. Also see Sections 22-085 and 22-101.

b. Reserved

c. (1) Chief Administrative Law Judge - The person designated and employed by, and directly responsible to the Director of the Department of Social Services and charged with the administration of state hearings and administrative disqualification hearings.

(2) Claimant - The person who has requested a state hearing and is or has been either:

(A) An applicant for or recipient of aid, as defined in Section 22-001a.(3);

(B) A foster parent or foster care provider who requests a hearing on behalf of the foster child where the CWD takes action to affect the child's aid and the child resides with or has resided with the foster parent or foster care provider.

1. There is no right to a state hearing concerning the placement or removal of a foster child. For grievance procedures applicable to the placement or removal of a foster child, see Section 30-378.

2. There is a right to a hearing concerning group home rates established by the state. For hearing procedures concerning group home rates established by the state, see Section 11-407 et seq.

22-001	DEFINITIONS (Continued)	22-001
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- (C) A representative of the estate of a deceased applicant or recipient (see Sections 22-004.4 and .5).
  - (D) The caretaker relative of a child with regard to the child's application for or receipt of aid.
  - (E) The guardian or conservator of an applicant or recipient.
  - (F) The sponsor of an alien, see MPP Sections 43-119, 44-353, and 63-804.1.
  - (G) A Transitional Child Care provider who receives direct payments for child care services on behalf of a Transitional Child Care family.
- (3) Compliance related issues - Issues which were not resolved in the prior state hearing decision or resulted from the prior hearing decision requiring the county to make further determinations regarding the claimant's eligibility or amount of benefits.
  - (4) County or CWD - For purposes of this division, "county" or "CWD" generally refers to the county welfare department. The term "county welfare department" is used in Sections 22-001c.(7), 22-003 and 22-073 to mean the welfare department in the county in which the recipient resides or the county that has taken the action or inaction with which the recipient is dissatisfied. Any references to "county" or "CWD" may also refer to any state department or contractor whose actions may be subject to a state hearing. For purposes of Sections 22-053.165, 22-073.13, 22-073.252, .253, and .254, "county" or "CWD" shall not include the State Department of Health Services.
  - (5) County Action - All actions which require adequate notice (see Section 22-071) and any other county action or inaction relating to the claimant's application for or receipt of aid.
  - (6) County Hearing Officer - A person, designated by the County Welfare Director, to conduct preliminary hearings and prepare written decisions. Such person shall be an impartial party who is not in any way connected with the previous actions or decisions in the case being appealed.
  - (7) County or CWD Representative - An employee who is assigned the major responsibility for preparing and/or presenting a hearing case on behalf of the CWD. (See Section 22-073.13.)
- d. (1) Days - Days shall refer to calendar days unless otherwise specified.

<b>22-001</b>	<b>DEFINITIONS (Continued)</b>	<b>22-001</b>
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- (2) Decision of the Director - The decision issued by the Director which resolves a state hearing case.

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**HANDBOOK BEGINS HERE**

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- (A) The decision may be in the form of an adopted proposed decision, a final decision or an alternate decision.

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**HANDBOOK ENDS HERE**

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- (3) Department - The Department of Social Services or the Department of Health Services whichever is appropriate.
- (4) Director - Refers to the Director of the Department of Social Services or the Director of the Department of Health Services whichever is appropriate.

e. Reserved

f. (1) Filing Date

- (A) All written requests for hearings shall be date stamped by the Administrative Adjudications Division or the CWD on the day the request is received. Unless the evidence indicates otherwise, the filing date of the claimant's written request for a state hearing shall be determined as follows:
1. If the request is mailed to the Administrative Adjudications Division, or to the CWD, the postmark date of the envelope;
  2. If the request is delivered by hand to the Administrative Adjudications Division or to the CWD, the date stamped on the request for hearing;
  3. If the date cannot be determined by the methods described above, three days before the request was stamped "received" by the Administrative Adjudications Division or the CWD.
  4. If the date cannot be determined by Sections 22-001f.(1)(A)1., 2., or 3., the date the request was signed;



22-001	DEFINITIONS (Continued)	22-001
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- (B) The filing date of an oral request shall be the date the request is received by the Department.
  - (C) If the claimant is provided a preliminary hearing in accordance with Section 22-074, the filing date for purposes of meeting the 90-day processing limitation set forth in Section 22-060, shall be the date of the decision from the preliminary hearing.
  - (D) If a written request is filed erroneously with the Administrative Adjudications Division or with a CWD in a county in which the claimant does not reside and in which the CWD has not taken any action or inaction with which the claimant is dissatisfied, the filing date shall be determined in the same manner as set forth above in Subsection (A).
- (2) Final Decision - The decision prepared and adopted by the Administrative Law Judge resolving a state hearing case and which shall be treated, for all purposes, as the decision of the Director.
- g. Reserved
- h. (1) Holiday - A Saturday, Sunday, and the holidays as specified in Government Code Sections 6700 et seq. which result in a postal holiday or the closing of Department or county offices.
- i. Reserved
- j. Reserved
- k. Reserved
- l. Reserved
- m. Reserved
- n. Reserved
- o. Reserved

<b>22-001</b>	<b>DEFINITIONS (Continued)</b>	<b>22-001</b>
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- p. (1) Preliminary Hearing - A procedure which provides a claimant who has requested a state hearing an opportunity to present his/her case directly to the CWD. The preliminary hearing procedure is available only in counties which have developed a preliminary hearing system under prior written approval by the Chief Administrative Law Judge. (See Section 22-074).
- (2) Proposed Decision - The decision prepared by the Administrative Law Judge concerning a state hearing case which he/she recommends to the Director for adoption.

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**HANDBOOK BEGINS HERE**

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- (A) A proposed decision will not resolve a state hearing case unless it has been adopted by the Director or adopted by operation of law. (See Section 22-062, Action by the Director.)

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**HANDBOOK ENDS HERE**

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- q. Reserved
- r. Reserved
- s. (1) State Hearing - A form of administrative hearing mandated by federal and state law whereby a dissatisfied claimant may obtain an impartial review of a county action.
- t. (1) Timely Notice - A written notice that is mailed to the person affected at least 10 days before the effective date of the action. See Section 22-072.4 for computation of the 10-day period.
- u. Reserved
- v. Reserved
- w. Reserved
- x. Reserved
- y. Reserved
- z. Reserved

NOTE: Authority cited: Sections 10553, 10554 and 10604, Welfare and Institutions Code. Reference: Sections 10613, 10950, 10963, 11209, and 11511(a), Welfare and Institutions Code; Sections 6700 and 6701, Government Code; 45 CFR 205.10; 45 CFR 205.10(a)(4)(i)(B); and 45 CFR 255.4(j)(1) and Part 256.

22-002	DETERMINATION OF TIME LIMITS	22-002
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- .1 If the last date for the performance of any act required by these regulations is a holiday, then such period shall be extended to the next day which is not a holiday.

22-003	RIGHT TO A STATE HEARING	22-003
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- .1 A state hearing shall be available to a claimant who is dissatisfied with a county action and requests a hearing in the manner set forth below.
- .11 There is no right to a state hearing regarding a Food Stamp or AFDC administrative disqualification, unless the issue is the CWD's method of implementing a Food Stamp or AFDC administrative disqualification hearing decision. (See Division 22, Chapters 22-200 and 22-300, Division 20, Chapter 20-300, and Division 63, Section 63-805.)
- .12 Notwithstanding any other regulation, there is no right to a state hearing when either state or federal law requires automatic grant adjustments for classes of recipients, unless the reason for the request for the state hearing is incorrect grant computation.
- .121 In the event of such automatic grant adjustment, the Administrative Adjudications Division shall promptly review the requests for a state hearing to determine whether the basis for a request is the automatic grant adjustment. See Section 22-054.
- .122 In the AFDC Program, all those who request a hearing when the change is because either state or federal law required an automatic grant adjustment shall be treated as though the subject of the hearing was not a law change until the time of the hearing.
- (a) If the Administrative Law Judge determines that the subject of the hearing was the wisdom or validity of such a law change, the request shall be permitted to be dismissed pursuant to Section 22-054.31.
- .13 In the Food Stamp Program the placement of a household on an alternate issuance system and the length of time the household is on this system shall not be subject to the state hearing process. See Section 63-605.326.

22-003	RIGHT TO STATE HEARING (Continued)	22-003
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- .14 There is no right to a state hearing on the part of any Transitional Child Care provider except on the issue of an overpayment which has been assessed against the provider.
- .15 Complaints as to discourteous treatment by a county employee shall not be subject to the state hearing process but shall be remanded to the CWD for resolution. This procedure shall only apply in those situations in which the ALJ at the hearing determines that the basis of the claimant's complaint has not resulted in any denial, delay, discontinuance or reduction in aid or services.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code. Reference: Sections 10613, 10950, 11209, and 11511(a), Welfare and Institutions Code; 45 CFR 205.10; 45 CFR 235.112(c)(2); 45 CFR 255.4(j)(1) and 256.4(b); and Madrid v. McMahon (1986) 183 CA 3d 151, 228 Cal. Rptr. 14.

22-004	REQUEST FOR A STATE HEARING	22-004
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- .1 A request for a state hearing may be either written or oral.
- .2 A written request concerning county administered state aid programs shall be filed with the CWD, and for all other state aid programs, the request shall be filed with the State Department of Social Services in Sacramento.
  - .21 A written request for hearing may be made in any form.
    - .211 Claimants are encouraged to use the reverse side of the Notice of Action (NA) or DFA 377 form series or other DSS-approved forms.
    - .212 The county agency shall assist the claimant in filing a request for a state hearing. The request for a state hearing should identify the aid program involved, as well as, the reason for dissatisfaction with the particular action or inaction involved in the case. If an interpreter will be necessary, the claimant should so indicate on the hearing request.
  - .22 When a written request for a state hearing is received by the CWD, a copy shall be forwarded to the Administrative Adjudications Division in Sacramento no later than three working days after its receipt.

<b>22-004</b>	<b>REQUEST FOR A STATE HEARING (Continued)</b>	<b>22-004</b>
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- .221 If the request for hearing concerns an action which is subject to the adequate notice provisions, a copy of the applicable Notice of Action, if available, shall be sent with the request.
- .3 An oral request shall be filed in person or by telephone at the Department of Social Services in Sacramento.

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**HANDBOOK BEGINS HERE**

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- .31 A toll-free number is available for this purpose.

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**HANDBOOK ENDS HERE**

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- .4 If a claimant dies after a request for a state hearing has been filed, yet before a hearing has been held, the proceeding may only be continued by, or on behalf of, the representative of the claimant's estate.
- .41 The legal representative of a claimant's estate is the executor/executrix or administrator/administratrix of the estate. If there is no estate to be probated, the representative may be a relative (e.g., parents, spouse, children, siblings, grandparents or grandchildren of the deceased claimant).
- .5 If the prospective claimant dies before filing a request for a state hearing, a request may only be filed by or on behalf of the representative of the claimant's estate by those individuals specified in Section 22-004.41.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

<b>22-005</b>	<b>REQUEST FOR REVIEW</b>	<b>22-005</b>
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Repealed by Manual Letter No. CFC-95-02, effective 5/12/95.

22-009	TIME LIMIT ON REQUEST FOR A STATE HEARING	22-009
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- .1 The request for a state hearing shall be filed within 90 days after the date of the action or inaction with which the claimant is dissatisfied.
  - .11 If the claimant received adequate notice of the action (see Section 22-001a.(1)), the date of the action shall be the date on which the notice was mailed to the claimant.
  - .12 Where a request for a state hearing concerns the current amount of aid the request shall be filed within 90 days, but the period of review shall extend back to the first of the month in which the first day of the 90 day period occurred.
  - .13 In the Food Stamp Program, the time limits for state hearing requests are set forth in Sections 63-802.4 and 63-804.5.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10950 and 10951, Welfare and Institutions Code and Morales v. McMahon (1990) 223 Cal App. 3rd Section 184, 272 Cal. Rptr. 688.

22-010	AUTHORIZED REPRESENTATIVE	22-010
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Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.

<b>STATE HEARING AND REQUEST FOR REVIEW</b>		
<b>Regulations</b>	<b>STATE HEARING - GENERAL</b>	<b>22-024</b>
<b>22-015</b>	<b>COUNTY WELFARE RESPONSIBILITY</b>	<b>22-015</b>
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.		
<b>22-017</b>	<b>EXPLANATION OF RIGHT TO STATE HEARING</b>	<b>22-017</b>
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.		
<b>22-021</b>	<b>ADEQUATE NOTICE</b>	<b>22-021</b>
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.		
<b>22-022</b>	<b>TIMELY NOTICE - AID PENDING HEARING</b>	<b>22-022</b>
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.		
<b>22-023</b>	<b>COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING</b>	<b>22-023</b>
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.		
<b>22-024</b>	<b>PRELIMINARY HEARING PROCEDURE</b>	<b>22-024</b>
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.		



STATE HEARING AND REQUEST FOR REVIEW		
Regulations	STATE HEARING - GENERAL	22-043
<b>22-025</b>	<b>DISMISSAL OF A PRELIMINARY HEARING</b>	<b>22-025</b>
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.		
<b>22-026</b>	<b>PROCEDURE AFTER THE PRELIMINARY HEARING</b>	<b>22-026</b>
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.		
<b>22-027</b>	<b>HEARING NOT HELD IN COUNTY RESPONSIBLE FOR AID</b>	<b>22-027</b>
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.		
<b>22-028</b>	<b>COMPLIANCE WITH STATE HEARING DECISIONS</b>	<b>22-028</b>
Renumbered by Manual Letter No. CFC-95-02, effective 5/12/95.		
<b>22-043</b>	<b>ACKNOWLEDGEMENT OF REQUEST FOR A STATE HEARING</b>	<b>22-043</b>
.1	The Administrative Adjudications Division shall mail to the claimant acknowledgement in writing of all requests for state hearings.	
.11	Such acknowledgement shall also be sent to the county if the county did not receive the original request.	

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-045	SETTING THE HEARING	22-045
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- .1 The state hearing shall be held in California in the county in which the claimant is living at the time of the hearing.
  - .11 If the claimant is unable to attend the hearing at the hearing location for reasons of poor health, the hearing shall be held in the claimant's home or in another place agreed to by the county and the claimant.
  - .12 The Administrative Adjudications Division may request verification from the claimant to support the reason why he/she cannot attend the hearing at the hearing location, and shall deny a request for a different hearing location in the absence of such requested verification.
  - .13 The Administrative Adjudications Division shall be permitted to schedule hearings to be conducted by telephone or video conference in lieu of an in-person hearing. Such hearings shall be conducted by telephone or video conference only if the claimant agrees.
    - .131 If the claimant later rescinds the agreement for a telephone hearing up to the time of the commencement of the hearing, an in-person hearing will be scheduled and this shall be considered a postponement for good cause.
    - .132 The ALJ may terminate the telephone hearing at the request of either party or on his/her own motion and order an in-person hearing when he/she determines that the claimant's right to due process is being prejudiced by the telephone hearing procedure.
- .2 The hearing shall be conducted at a reasonable time, date, and place.
  - .21 In the Food Stamp Program, the Administrative Adjudications Division shall expedite the scheduling of hearings requested by households who expect to leave the State. See Section 22-073.243.
- .3 The Administrative Adjudications Division shall mail or deliver to the claimant and the county a written notice of the time and place of the hearing not less than ten days prior to the hearing.
  - .31 The time of notice shall be permitted to be shortened with the consent of the parties.
  - .32 Any party shall be permitted to waive notice.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code and 45 CFR 205.10(a)(2).

<b>22-047</b>	<b>GROUP HEARINGS</b>	<b>22-047</b>
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- .1 A group of claimants with a common complaint may request that the Administrative Adjudications Division establish a group hearing.
- .2 The Administrative Adjudications Division may schedule a group hearing when in a series of individual requests for a state hearing the sole issue set forth in the request is one involving state or federal law or changes in state or federal law.
- .3 In all group hearings, each individual claimant shall be permitted to present his/her own case, and shall be permitted to be represented by any person he/she may desire.
- .4 A separate written decision shall be issued to each claimant in a group hearing.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-049	THE HEARING - GENERAL RULES AND PROCEDURES	22-049
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- .1 Attendance at the hearing is ordinarily limited to the claimant, authorized representative (as defined in Section 22-001a.(5), county representative, legal counsel, authorized interpreter, and witnesses relevant to the issue. Other persons may attend the hearing if the claimant agrees to or requests their presence and the Administrative Law Judge determines that their presence will not be adverse to the hearing.
- .11 Appearance by the claimant (in person or by the authorized representative) shall be required at the hearing, unless the hearing is a rehearing or further hearing.
- .12 The Administrative Law Judge shall be permitted to exclude a witness during the testimony of other witnesses.
- .13 Both the county and the claimant shall have the right to have a representative present throughout the hearing. Both the county representative and the claimant's authorized representative shall have the right to designate another person to be present and advise the representative throughout the hearing. This individual may be a witness who testifies on behalf of the county or claimant and in this circumstance, Section 22-049.12 would not apply. If this individual is a witness, he/she may not be present as an advisor until after he/she has testified.
- .14 The Administrative Law Judge shall have the authority to exclude persons who are disruptive of the hearing.

22-049	THE HEARING - GENERAL RULES AND PROCEDURES (Continued)	22-049
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- .2 The hearing shall be conducted in an impartial manner.
- .3 All testimony shall be submitted under oath, affirmation, or penalty of perjury.
- .4 The proceedings at the hearing shall be reported by tape recorder or otherwise perpetuated by mechanical, electronic, or other means capable of reproduction or transcription.
- .5 The issues at the hearing shall be limited to those issues which are reasonably related to the request for hearing or other issues identified by either the county or claimant which they have jointly agreed, prior to or at the state hearing, to discuss.
  - .51 If the rights of any party will be prejudiced by the consideration of a reasonably related issue raised at the hearing, the hearing shall be continued or the record held open subject to the provisions of Section 22-053.3 so that such party may prepare his/her case.
  - .52 If the claimant contends that he/she is not adequately prepared to discuss the issues because he/she did not receive adequate notice required by Section 22-071.1, this issue shall be resolved by the Administrative Law Judge at the hearing.
    - .521 If the Administrative Law Judge determines that adequate notice was provided, the claimant shall agree to discuss the substantive issue or issues or the case will be dismissed.
    - .522 If the Administrative Law Judge determines that adequate notice was not provided, the case shall be postponed unless the claimant waives the adequate notice requirement for purposes of proceeding with the hearing, and agrees to discuss the substantive issue or issues at the hearing.

22-049	THE HEARING - GENERAL RULES AND PROCEDURES (Continued)	22-049
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- .523 If the notice was not adequate and involved a discontinuance, suspension, cancellation, termination or reduction of aid, other than those referred to in Sections 22-072.1 through .13 aid shall be reinstated retroactively and the provisions of Section 22-072.5 shall apply.
- .53 In cases in which a jurisdictional issue is raised, either by one of the parties or by the Administrative Law Judge, the parties must be prepared to submit evidence on the substantive issues except as provided in Sections 22-049.532 and 22-054.4.
- .531 No determination of the timeliness of the hearing request or of any other jurisdictional issue will ordinarily be made at the hearing. The request will be dismissed by a written decision if the Administrative Law Judge determines that jurisdiction does not exist, e.g., request untimely or no subject matter jurisdiction.
- .532 If, prior to or at the hearing, both parties agree to discuss only the jurisdictional issue, or the ALJ on his/her own motion determines that only the jurisdictional issue will be discussed, the parties need not submit evidence on the substantive issues and the Administrative Law Judge shall take evidence only on the jurisdictional issue. Within ten days from the date of the hearing, the Administrative Law Judge shall:
- (a) Inform the parties in writing that the hearing will not proceed on the substantive issues and a decision will be prepared solely on the jurisdictional issue, or
  - (b) Inform the parties that an additional hearing will be held on the substantive issues, and provide the parties a minimum of ten days in which to prepare on the substantive issues unless the time is waived by both parties. In this case, the Administrative Law Judge's proposed decision will address both the jurisdictional and substantive issues.
- .6 An interpreter shall be provided by the state if, prior to the hearing, a party requests an interpreter or if at the hearing, the Administrative Law Judge determines that an interpreter is necessary.
- .61 When the state hearing is to be held with the assistance of an interpreter, the Administrative Law Judge shall determine if the interpreter has been certified by the Department.

22-049	THE HEARING - GENERAL RULES AND PROCEDURES (Continued)	22-049
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- .611 If the interpreter has been certified, the qualifications and competency of the interpreter need not be further examined.
- .612 If the interpreter has not been certified, the Administrative Law Judge shall:
- (a) Examine the qualifications and competency of the interpreter.
  - (b) Disqualify any interpreter determined by the Administrative Law Judge not to be competent for interpretation purposes.
  - (c) Assure objective interpretation by, at his/her discretion, disqualifying interpreters who are:
    - (1) claimant's relatives, friends, or an authorized representative;
    - (2) county staff who participated in making the decision complained of;
    - (3) the county appeals representative;
    - (4) any other individual determined by the Administrative Law Judge to be detrimental to the hearing process or having a bias or the appearance of being biased.
- .62 When the state hearing is held with the assistance of an interpreter the administrative law judge shall assure objective interpretation.
- .63 A separate oath or affirmation to translate accurately shall be administered to all interpreters.
- .7 The rights of the claimant and the county shall include the right to:
- .71 Examine parties and witnesses;
  - .72 Conduct such cross-examination as may be required for a full disclosure of the facts;
  - .73 Introduce exhibits;

22-049	THE HEARING - GENERAL RULES AND PROCEDURES (Continued)	22-049
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- .74 Bring witnesses;
- .75 Examine all documents prior to and during the hearing;
- .76 Question opposing witnesses and parties on any matter relevant to the issues even though that matter was not covered in the direct examination;
- .77 Make oral or written argument;
- .78 Rebut the evidence.
- .8 The following shall apply to communications concerning the hearing:
  - .81 All documents submitted by either the claimant or the county shall be made available to both parties.
    - .811 Copies of all such documents shall be provided to the claimant free of charge.

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**HANDBOOK BEGINS HERE**

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- (a) See Section 22-073.25 regarding position statement requirements.

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**HANDBOOK ENDS HERE**

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- .82 Merits of a pending state hearing shall not be discussed between the Administrative Law Judge and a party outside the presence of the other party.
- .9 Whenever it is necessary that another county be joined as a party to the action in order to dispose of all issues, the Administrative Law Judge shall so order and shall, subject to Section 22-053.3, postpone the hearing, hold the record of the hearing open, or continue the hearing as necessary.
  - .91 A postponement for this reason shall be deemed a postponement for good cause.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10958.1 and 10967, Welfare and Institutions Code.



22-050	EVIDENCE	22-050
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- .1 The taking of evidence in a hearing shall be conducted by the Administrative Law Judge in a manner best suited to ascertain the facts and to control the conduct of the hearing.
- .11 Prior to taking evidence, the Administrative Law Judge shall identify the issues and shall state the order in which evidence shall be received.
- .2 Except as provided below, evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
- .21 The rules of evidence as applicable in judicial proceedings shall not be applicable in state hearings.
- .22 The Administrative Law Judge shall be permitted to exclude evidence which is irrelevant, cumulative or unduly repetitious.
- .23 The Administrative Law Judge shall exclude evidence which is privileged under the Evidence Code if the privilege is claimed in accordance with law.
- .3 Although evidence may be admissible under Section 22-050.2, the Administrative Law Judge shall consider the nature of the evidence in assessing its probative value.
- .4 "Official Notice" describes the manner in which an Administrative Law Judge or the Director will recognize the existence and truth of certain facts which have a bearing on the issue in the case, without requiring the actual production of evidence to prove such facts. Official notice may be taken of either a proposition of law or a proposition of fact.
- .41 The Administrative Law Judge or Director shall take official notice of those matters which must be judicially noticed by a court under Section 451 of the Evidence Code.

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**HANDBOOK BEGINS HERE**

- .411 Generally, Section 451 of the Evidence Code provides that judicial notice must be taken of laws, statutes, regulations, official records, and facts and propositions which are of such universal knowledge that they are not reasonably subject to dispute.

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**HANDBOOK ENDS HERE**

22-050	EVIDENCE (Continued)	22-050
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- .42 The Administrative Law Judge may take official notice of those matters set forth in Section 452 of the Evidence Code.

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**HANDBOOK BEGINS HERE**

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- .421 Generally, Section 452 of the Evidence Code provides that official notice may be taken of facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

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**HANDBOOK ENDS HERE**

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- .43 The Administrative Law Judge may take official notice of any generally accepted technical fact relating to the administration of public social service.
- .44 With respect to matters under Subsection .43 above and subdivision (f) of Section 451 and Section 452 of the Evidence Code which are of substantial consequence to the determination of the action, each party shall be given reasonable opportunity, subject to Section 22-053.3, before the decision is submitted, to present information relevant to:
- .441 The propriety of taking official notice, and
- .442 The tenor of the matter to be noticed.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-051	THE EXAMINATION OF RECORDS AND ISSUANCE OF SUBPOENAS	22-051
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- .1 Upon request, the CWD shall allow the claimant to examine the case record during regular working hours (see Section 19-005).
- .11 If portions of the case record are privileged under the provisions of Section 19-006, the claimant shall be entitled to inspect such material only if the claimant is the holder of the privilege.
- .2 The claimant shall have the right prior to and during the hearing, to examine nonprivileged information which the county has used in making its decision to take the action which is being appealed.

22-051	THE EXAMINATION OF RECORDS AND ISSUANCE OF SUBPOENAS (Continued)	22-051
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- .3 The CWD shall reproduce without charge, or at a charge related to the cost of reproduction, the specific policy materials, including regulations, necessary for an applicant or recipient, or his/her authorized representative, to determine whether a state hearing should be requested or to prepare for a state hearing.
- .31 In the Food Stamp Program such material shall be made available to the household or its authorized representative at no charge.
- .4 Before the hearing has commenced the Chief Administrative Law Judge or his/her designee shall be permitted to, upon the written or oral request of the claimant or the CWD, issue a:
- .41 Subpoena requiring the presence of any witness whose expected testimony has been shown to be relevant, and not cumulative or unduly repetitious.
- .42 Subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda, or other records.
- .421 The person who requests the subpoena duces tecum shall submit a statement under penalty of perjury describing the materials desired to be produced and their relevancy.
- .422 A witness may comply with the subpoena duces tecum by providing certified copies of the material requested.
- .5 After the hearing has commenced, the Administrative Law Judge assigned to the case shall be permitted to issue a subpoena or subpoena duces tecum as necessary.
- .6 The party requesting the subpoena or subpoena duces tecum shall have the responsibility of having it served. The service of the subpoena shall be made to allow the witness subpoenaed a reasonable time for preparation and travel to the place of attendance.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code and Code of Civil Procedure Section 1987.

22-052	WITNESS FEES AND MILEAGE	22-052
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- .1 A witness who is subpoenaed at the request of the claimant and who appears at the hearing shall be permitted to demand payment for witness fees and mileage from the Department on a form specified by that Department.
- .11 The amount of witness fees and mileage paid shall be the same as the amount specified in the Government Code for witness fees and mileage.
- .2 A witness who is subpoenaed at the request of the county and who appears at the hearing shall be permitted to demand payment for witness fees and mileage from the county on a form specified by the county.
- .21 The amount of witness fees and mileage paid shall be the same as the amount specified in the Government Code for witness fees and mileage.

22-053	POSTPONEMENTS AND CONTINUANCES FOR ADDITIONAL EVIDENCE	22-053
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- .1 Postponements shall be granted under limited conditions.
- .11 A hearing involving the Food Stamp Program shall be postponed upon the initial request of the claimant prior to the hearing for up to 30 days.
  - .111 Any aid pending, if appropriate, shall continue at least until the next scheduled hearing. See Section 63-804.64 in the Food Stamp Program.
  - .112 In all other programs, a hearing may be postponed upon the request of the claimant only if such request meets the good cause criteria set forth in Section 22-053.16.
    - (a) The Department shall have the authority to request verification from the claimant to support the reason why he/she cannot attend the hearing on the scheduled date.

22-053	POSTPONEMENTS AND CONTINUANCES FOR ADDITIONAL EVIDENCE (Continued)	22-053
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- .12 Upon the request of the county, a hearing shall be permitted to be postponed:
  - .121 By the administrative law judge at the hearing;
  - .122 Any postponement granted under Section 22-053.12 shall be deemed postponed with good cause.
- .13 The Chief Administrative Law Judge shall have the authority to postpone a hearing prior to the hearing.
  - .131 Any postponement granted under Section 22-053.13 shall be deemed postponed with good cause.
- .14 The Administrative Law Judge shall have the authority to postpone a hearing, at the hearing, and continue any applicable aid pending if:
  - .141 The claimant establishes good cause as specified in Section 22-053.16.
  - .142 The county has failed to furnish adequate notice within the meaning of Sections 22-001.1a.(1) and 22-049.52, and the claimant requests the postponement.
- .15 The Administrative Law Judge shall have the authority to postpone a hearing, for any other reason at his/her discretion.
  - .151 The Administrative Law Judge shall order that aid pending be continued only if the postponement is necessary to insure a full and fair hearing and the postponement did not result from any act or omission on the part of the claimant.
- .16 Good cause shall be established if the claimant or authorized representative establishes that the case should be postponed due to:
  - .161 Death in the family.
  - .162 Personal illness or injury.

22-053	POSTPONEMENTS AND CONTINUANCES FOR ADDITIONAL EVIDENCE (Continued)	22-053
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- .163 Sudden and unexpected emergencies which prevent the claimant or the authorized representative from appearing.
  - .164 A conflicting court appearance which cannot be postponed.
  - .165 The county, when required, does not make a position statement available to the claimant not less than two working days prior to the date of the scheduled hearing, or the county has modified the position statement (as defined in Section 22-073.252) after providing the statement to the claimant, and the claimant has waived decision deadlines contained in Section 22-060.
- .2 Continuances for additional evidence shall be granted under limited conditions.
- .21 If the Administrative Law Judge conducting the hearing determines that evidence not available at the hearing is necessary for the proper determination of the case, the Administrative Law Judge shall have the authority to continue the hearing to a later date or close the hearing and hold the record open for a stated period not to exceed 30 days in order to permit the submission of additional documentary evidence.
- .3 When a hearing is postponed, continued, or reopened at the claimant's request, the 60-day or 90-day period provided in Section 22-060 shall be extended. Any such requests for postponement, continuance, or reopening of a hearing may not exceed 30 days each. Every time a claimant requests a postponement, continuance, or reopening, he/she must be given a written notice that explains that the time for rendering a decision will be extended for a period not to exceed 30 days.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10952.5 and 10957, Welfare and Institutions Code and 7 CFR 273.15(c).

**22-054      DISMISSALS****22-054**

- .1      Except in the AFDC Program, the Office of the Chief Administrative Law Judge shall deny or dismiss a request for a hearing where the sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients.
  - .11    Aid shall not be continued in the amount that claimant would have been paid if the adjustment had not been made.
- .2      In cases other than those specified in .1 above, and .4 below, a request for hearing shall not be dismissed prior to the hearing unless it has been withdrawn or abandoned.
  - .21    Withdrawal
    - .211    The claimant may withdraw his/her hearing request any time before a decision of the Director is signed.
      - (a)      Such withdrawal shall be submitted in writing. If the claimant has verbally withdrawn the hearing request prior to the hearing, and such withdrawal is unconditional, the Department will send the claimant a letter confirming the withdrawal of the request. The letter shall serve as the written withdrawal. The request for hearing shall be considered withdrawn unless within 15 days of the mailing of such letter, the Department receives notice, either submitted in writing or orally, that the claimant has not withdrawn the request for hearing.
      - (b)      A withdrawal may be unconditional or conditional.

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**HANDBOOK BEGINS HERE**

- (1)      See Section 22-072.71 regarding the effect of withdrawal on aid pending.

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**HANDBOOK ENDS HERE**

22-054	DISMISSALS (Continued)	22-054
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- (2) If the withdrawal is unconditional, the hearing request shall be immediately dismissed.
  - (A) The dismissal shall be without prejudice in that the claimant may be permitted to file a new hearing request raising the identical issue provided that the request is filed timely pursuant to Section 22-009.
- (3) If the withdrawal is conditional:
  - (A) The withdrawal shall be accompanied by an agreement signed by the claimant and by the county.
  - (B) Any agreement under this provision shall provide that the actions of both parties will be completed within 30 days from the date the conditional withdrawal form is signed by both parties and received by the county. See Section 22-071.14 regarding adequate notice with conditional withdrawal.
  - (C) After the county issues notice of its redetermination, if the claimant does not reinstate the hearing request within the time limits set forth in Section 22-009 the request shall be dismissed.

.22 Abandonment

- .221 If the claimant, without good cause therefore, fails to appear, by him/her self or by authorized representative, at the hearing scheduled for such claimant, the request shall be considered abandoned.



22-054	DISMISSALS (Continued)	22-054
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- .222 If within ten days from the date of the scheduled hearing, the claimant requests that the hearing request be reinstated and establishes good cause for failing to appear at the hearing, the hearing shall be rescheduled.
- (a) The criteria for good cause shall include, but not be limited to:
- (1) The failure of the claimant to receive notice of the time and place of the hearing. The notice of the time and place of the hearing shall be mailed to the claimant's last known address and good cause shall not be established if the claimant failed to notify the county or Department of any change of address while the appeal is pending.
- (2) The criteria set forth in Section 22-053.16.
- (b) If the hearing is rescheduled, any applicable aid pending the hearing shall be reinstated as specified in Section 22-072.711.
- (c) If the hearing is not rescheduled, or the claimant does not request reinstatement within 10 days from the scheduled hearing date, the claimant shall be notified in writing as to the specific reasons for the decision and right to request a rehearing as specified in Section 22-065.
- (d) The Department shall have authority to request a written declaration or other verification from the claimant to support the reason for the nonappearance.
- .3 A request for hearing or portion thereof shall be dismissed by a written hearing decision when:
- .31 The issue is not within the jurisdiction of a state hearing as defined in Section 22-003.1 and Welfare and Institutions Code Section 10950;

22-054	DISMISSALS (Continued)	22-054
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- .32 The request for hearing is filed beyond the time limit set forth in Section 22-009;
- .33 The Administrative Law Judge determines at the hearing that the claimant or authorized representative is unwilling to present his/her case.
- .34 The Administrative Law Judge determines that the identical issue has been the subject of a previous state hearing involving the claimant.
- .35 The person who requests the hearing does not have standing to request the hearing. See Section 22-001c.(2).
- .36 The Administrative Law Judge fails to receive a written authorization following the hearing as specified in Section 22-085.2.
- .37 The request for hearing raises a compliance issue, e.g., an allegation that the county has failed to comply with a previously adopted state hearing decision. See Section 22-078.
- .4 The Chief Administrative Law Judge, or his/her designee, shall have authority to dismiss, without a hearing and written decision, a hearing request which is subject to dismissal under Sections 22-054.31, .32 or .37.
  - .41 Prior to such dismissal, a letter setting out the reasons for the dismissal shall be sent to the claimant indicating that a dismissal shall occur within 15 days unless the claimant sets forth further facts and/or argument, orally or in writing, which would indicate that the matter should not be dismissed.
  - .42 If the claimant presents information that may indicate that the matter should not be dismissed, a hearing shall be scheduled.
  - .43 If the claimant presents information but it fails to establish that the matter should be heard, the request shall be dismissed and a hearing will not be scheduled. The claimant shall be notified of the reasons for such action.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code and 45 CFR 205.10(a)(5)(8).

22-055	DISQUALIFICATION OF AN ADMINISTRATIVE LAW JUDGE	22-055
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- .1 An Administrative Law Judge shall voluntarily disqualify himself or herself and withdraw from any proceeding in which he/she cannot give a fair and impartial hearing or in which he/she has an interest.
- .2 A party may request at any time prior to the close of the record, that the Administrative Law Judge be disqualified upon the grounds that a fair and impartial hearing cannot be held or a decision cannot be rendered.
  - .21 Such request shall be ruled upon by the Administrative Law Judge prior to the close of the record. The Administrative Law Judge's determination is subject to rehearing review and judicial review in the same manner and to the same extent as other determinations of the ALJ in the proceeding.
- .3 If, at the beginning or during the hearing, the Administrative Law Judge upholds a party's motion for disqualification, the matter shall be postponed. A postponement due to a disqualification of an Administrative Law Judge shall be considered a postponement with good cause. If, after the hearing, but before the close of the record the Administrative Law Judge determines that disqualification is appropriate, the provisions of Section 22-061 shall apply.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-056	CLAIMANT LIVING OUTSIDE OF CALIFORNIA/ INSTITUTIONALIZED CLAIMANTS	22-056
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- .1 When a request for a state hearing is received from a person presently living outside of the state, or from an inmate or patient of a California penal institution or other institution, it shall be acknowledged and reported in the same manner as other requests for a state hearing.
- .11 Unless the claimant voluntarily offers to return to California for the hearing or authorizes a representative in California, the parties shall be advised that the hearing will be conducted by telephone.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-059	COMMUNICATIONS AFTER HEARING	22-059
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- .1 Communications to the Department concerning a case subsequent to the hearing shall be excluded from the record and shall be disregarded prior to the adoption and release of the decision of the Director except that:
  - .11 Oral and written communications after the hearing concerning the status of the decision, or the date of delivery of additional evidence to be submitted under the provisions of Section 22-053.21, or protesting an Administrative Law Judge's determination under Section 22-072.63 with respect to aid pending a hearing or a disqualification request under the provisions of Section 22-055, are not improper; and
  - .12 An Administrative Law Judge shall have authority on his/her own motion or at the request of either party to reopen the record for receipt of additional information, if all parties are notified of the reason for the reopening and the submission of such evidence conforms to the requirements of Sections 22-053.21 and .3.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-060	DISPOSITION OF STATE HEARINGS	22-060
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- .1 All state hearings shall be decided or dismissed within 90 days from the date of the request for state hearing except in those cases where the claimant waives such requirement or the claimant withdraws or abandons the request for hearing.
  - .11 If the claimant conditionally withdraws the hearing request under the provisions of Section 22-054.21, the 90-day period shall extend from the date on which the request for hearing is reinstated.
  - .12 In the Food Stamp Program all state hearing shall be decided or dismissed and the claimant and CWD notified of the decision within 60 days from the date of the request for a state hearing. The same exceptions apply as stated in .1 above.
    - .121 If the issues at a state hearing concern both public assistance and food stamp benefits, the hearing shall be conducted according to public assistance procedures and the 90-day rather than the 60-day period shall apply.

22-061	SUBMISSION OF PROPOSED DECISION/ADOPTION	22-061
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- .1 After the hearing has been closed, the Administrative Law Judge shall submit a proposed decision for review by the Chief Administrative Law Judge and submission to the Director, or shall adopt a final decision pursuant to the authority delegated to the Administrative Law Judge by the Director.
- .2 If the Administrative Law Judge who heard the case is unavailable to prepare the proposed decision, the Chief Administrative Law Judge shall contact the claimant and notify him/her that the case is being assigned to another Administrative Law Judge for preparation of the decision on the record.
  - .21 The notice shall inform the claimant that he/she may elect to have a new oral hearing held in the matter, provided that he/she agrees to waive the 90-day or 60-day period set forth in Section 22-060.
  - .22 An Administrative Law Judge shall be considered unavailable within the meaning of this section if he/she
    - .221 Is incapacitated;
    - .222 Has ceased employment as an Administrative Law Judge;
    - .223 Is disqualified under Section 22-055.
- .3 The Department shall be deemed to have received the proposed decision on the date such decision has been certified for the review of the Chief Administrative Law Judge.
- .4 Decisions rendered by Administrative Law Judges pursuant to the authority delegated to them by the Director shall be considered final upon signing and dating by the Administrative Law Judge.
- .5 Decisions issued by Administrative Law Judges shall be based exclusively on the evidence and other material introduced at the hearing, or after the hearing but while the record is open, and shall specify the reasons for the decision and identify the supporting evidence and regulations.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code and 45 CFR 205.10(a)(15)(ii).

22-062	ACTION BY THE DIRECTOR	22-062
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- .1 The Director after receiving the proposed decision shall:
  - .11 Adopt the decision in its entirety; or
  - .12 Decide the matter on the record, including the transcript, with or without taking additional evidence-an alternate decision; or
  - .13 Order a further hearing to be conducted.
- .2 If the Director fails to act in the manner specified in .1 above within 30 days after the Department's receipt of the proposed decision, the proposed decision shall be deemed adopted.
- .3 The decision of the Director shall be in writing.
  - .31 The decision shall include:
    - .311 A statement of the facts;
    - .312 The statutes and regulations involved;
    - .313 The reasoning which supports the decision.
- .4 The decision shall determine only those circumstances and issues existing at the time of the county action in dispute or otherwise agreed to by the parties.
- .5 In cases involving allegations of discrimination and preparation of a report in accordance with Section 21-203.2, the case shall be remanded to the county for the preparation of a report in accordance with Section 21-203.12.

<b>22-063</b>	<b>NOTICE OF DECISION</b>	<b>22-063</b>
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- .1 After the Administrative Law Judge's proposed or final decision is adopted or an alternate decision is rendered by the Director, a copy shall be mailed to the claimant and the county.
- .11 The notice of decision shall contain:
  - .111 A statement concerning the right to judicial review.
  - .112 Applicable rehearing rights.
  - .113 A statement advising the claimant that, if the court decides the case in his/her favor, he/she shall be entitled to reasonable attorney's fees and the cost of the suit.
- .2 If the Director renders an alternate decision or orders a further hearing, a copy of the proposed decision(s) shall be mailed to the claimant and the county with the final decision.
- .3 The Director retains jurisdiction to rectify clerical errors contained in the decision after the decision has been issued.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

<b>22-064</b>	<b>AVAILABILITY OF STATE HEARING RECORDS</b>	<b>22-064</b>
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- .1 The verbatim record of the testimony and exhibits, or an official report containing the substance of what transpired at the hearing, together with all papers and the request filed in the proceedings, and the Administrative Law Judge's proposed decision shall constitute the exclusive record for decision. Such materials shall be available to the claimant and the county during normal working hours at the Administrative Adjudications Division or at a mutually agreed-upon location for three years after the date of the decision of the Director.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.



<b>22-065</b>	<b>REHEARING</b>	<b>22-065</b>
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- .1 The claimant or the county may file a request for a rehearing.
  - .11 Such request shall be in writing and shall be filed with the Office of the Administrative Adjudications Division not more than 30 days after receipt of the hearing decision.
    - .111 For rehearing requests involving a decision issued by the Department of Health Services, the request shall be mailed to the Department of Social Services.
    - .112 The request shall not be required to be in any particular form.

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**HANDBOOK BEGINS HERE**

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- (a) Such request should specify the reasons for the rehearing request.

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**HANDBOOK ENDS HERE**

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- .12 If the request is to permit presentation of additional evidence, the request shall:
  - .121 Describe the additional evidence;
  - .122 State why it was not previously introduced; and
  - .123 Explain its materiality.
  - .124 Explain how the additional evidence will change the outcome of the hearing decision.
- .13 The request shall state the date the decision was received.
  - .131 In the absence of such statement, the date of receipt shall be either three days after the date of the postmark on the envelope containing the decision or three days after the date the decision was released by the Department whichever is later.

<b>22-065</b>	<b>REHEARING (Continued)</b>	<b>22-065</b>
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- .14 The postmark on the envelope containing the rehearing request shall be the filing date.
  - .141 If the postmark on the envelope is unreadable, the filing date shall be the date the request for rehearing is signed.
  - .142 If the postmark is unreadable and the request for rehearing is undated, the filing date shall be three days prior to the date the rehearing request is stamped "received" by the Department.
- .2 Upon receipt of a timely rehearing request, the Director shall mail a copy of the request on the other party to the hearing.
  - .21 This party shall be permitted to file a statement supporting or opposing the rehearing request.
    - .211 Such statement shall be in writing and shall be filed with the Director not later than five days after service.
      - (a) The filing date shall be determined in accordance with the provisions of .14 above.
- .3 The Director shall grant or deny the request no earlier than five nor later than 15 working days after it is received by the Chief Administrative Law Judge.
  - .31 If the Director does not act within this period, the request for rehearing shall be deemed denied.
- .4 If a request for rehearing is granted, the Director shall:
  - .41 Order reconsideration of the decision on the basis of the evidence in the record and any additional evidence which may be submitted by the claimant or the county.
    - .411 Any evidence obtained shall be submitted to the opposing party for rebuttal;
  - .42 Order a new hearing on one or more of the issues presented at the original state hearing.

22-065	REHEARING (Continued)	22-065
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- .5 Where the Director's order is pursuant to the provisions of .41 or .42 above, the claimant and the county shall be informed that either may request that the rehearing be conducted in the same manner as the original hearing.
- .51 Any such requests received prior to the date of reconsideration that is specified in the Director's order shall be honored.
- .6 A decision of the Director issued upon a rehearing shall not be subject to further state hearing.
- .7 When a request for rehearing is denied, the Notice of Denial shall contain a statement concerning a right to judicial review and shall advise the claimant that, if the court decides the case in his/her favor, he/she shall be entitled to reasonable attorney's fees and the cost of the suit.
- .8 A rehearing request shall be permitted to be withdrawn anytime before the Department has acted upon the request.
- .9 After a rehearing request has been granted, it shall be permitted to be withdrawn by the requesting party subject to the approval of the Chief Administrative Law Judge, his/her designee or the Administrative Law Judge.

NOTE: Authority cited: Sections 10553, 10554 and 10960, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-069	COUNTY WELFARE RESPONSIBILITY	22-069
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- .1 Each county shall furnish to the Administrative Adjudications Division the name of an individual who, in coordination with the Chief Administrative Law Judge, is responsible for discharging the requirements of Sections 22-069 through 22-078.

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- .11 Sections 22-069 through 22-078 describe the responsibilities of the county in the state hearing process.

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- .12 The county responsibility shall include:
- .121 Investigation of the case and assistance to the claimant prior to the hearing; and
  - .122 Presentation of the county's position during the hearing; and
  - .123 Compliance with state hearing decisions.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-070	EXPLANATION OF RIGHT TO STATE HEARING	22-070
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- .1 At the time of application, the county agency shall provide the applicant with the following:
- .11 A thorough explanation of the right to request a state hearing.
  - .12 Pamphlet PUB 13 (4/91), "Your Rights Under California Welfare Programs," prepared by the Department concerning client rights, complaints and state hearings.
- .2 The county shall also provide the explanation required in Sections 22-070.11 and .111 when a claimant makes an informal complaint with the county agency.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-071	ADEQUATE NOTICE	22-071
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- .1 Except as provided in Section 22-071.2, the county shall give the claimant adequate notice as defined in Section 22-001a.(1) in the following instances:
  - .11 When aid is granted or increased;
  - .12 When aid is denied, decreased, suspended, cancelled, discontinued, or terminated;
    - .121 A decrease shall include an overpayment adjustment and balancing.
  - .13 When the county demands repayment of an overpayment or a food stamp overissuance;
  - .14 When the county takes action after the claimant has conditionally withdrawn a request for a state hearing (see Section 22-054).
  - .15 When a food stamp application is pended (see Section 63-504.24).
  - .16 When the county determines that immediate need does not exist (see Section 40-129).
  - .17 When the county takes action regarding compliance related issues resulting from state hearing decisions (see Sections 22-001c.(3) and 22-078).
  - .18 When the county takes action to change the manner or form of payment to a protective or vendor payment.
  - .19 When the county demands repayment of an overpayment from a Transitional Child Care provider.
- .2 The adequate notice requirement is not applicable to certain actions involving Social Services (Division 30) and Food Stamps (MPP Section 63-504.266).
- .3 In all cases, the notice shall be prepared on approved Department forms or a county substitution which has been approved by the Department of Social Services, including but not limited to a county-developed computer equivalent.
- .4 The notice shall be prepared in clear, nontechnical language.

<b>22-071</b>	<b>ADEQUATE NOTICE</b>	<b>22-071</b>
	(Continued)	

- .5 If a claimant submits a request for a state hearing on the back of the notice, a duplicate copy of the notice shall be provided to the claimant on request.
- .6 When appropriate, the notice shall also inform the claimant regarding what information or action, if any, is needed to reestablish eligibility or determine a correct amount of aid.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10613, 11209, and 11511(a), Welfare and Institutions Code; and 45 CFR 255.4(j)(1) and 256.4(b).

<b>22-072</b>	<b>TIMELY NOTICE - AID PENDING HEARING</b>	<b>22-072</b>
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- .1 Except as provided below, in all instances where the county action would result in a discontinuance, termination, suspension, cancellation, or decrease of aid, or in a change in the manner or form of payment to a protective or vendor payment, the county shall mail timely and adequate notice as defined in Sections 22-001a.(1) and 22-001t.(1) to the persons affected.
- .11 The provisions of Section 22-072 shall not apply to certain actions involving Social Services (see Division 30).
- .12 In the Food Stamp Program the provisions of Section 22-072 shall be limited and modified by Sections 63-504.266, .267, 63-804.6, and 63-107.9.
- .13 When either state or federal law requires automatic grant adjustments for classes of recipients, the Department shall provide timely and adequate notice to the persons affected or shall direct the county to give such notice at least ten days prior to the effective date of the adjustment.
- .2 Timely notice shall not be required in the following instances, although the county shall send adequate notice no later than the effective date of the action:
- (a) The county has factual information confirming the death of the person affected;

22-072	<b>TIMELY NOTICE - AID PENDING HEARING</b> (Continued)	22-072
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- (b) The county receives a clear written statement signed by the person affected that:
  - (1) he/she no longer wishes aid or,
  - (2) gives information which requires discontinuance or reduction of aid and the person has indicated, in writing, that he/she understands that this must be the consequence of supplying such information;
- (c) The person affected has been admitted or committed to an institution, and further payments to that individual do not qualify for federal financial participation under the state's plan;
- (d) The person affected has been placed in a skilled nursing facility, intermediate care facility or long-term hospitalization;
- (e) The whereabouts of the person affected are unknown and the county mail directed to him/her has been returned to the Post Office indicating no known forwarding address.
  - (1) The person's aid payment shall be made available to him/her if his/her whereabouts become known during the payment period covered by the returned check.
- (f) An Aid to Families with Dependent Children (AFDC) child is removed from the home as a result of a judicial determination, or voluntarily placed in foster care by his/her parent or legal guardian.
- (g) The person affected has been accepted for aid in a new jurisdiction, and that fact has been established by the county previously providing aid.
- (h) A change in level of medical care is prescribed by the recipient patient's physician or modified by utilization review.
- (i) A special allowance granted for a specific period is terminated, and the recipient has been informed in writing at the time of initiation that the allowance shall automatically terminate at the end of the specified period.

<b>22-072</b>	<b>TIMELY NOTICE - AID PENDING HEARING</b>	<b>22-072</b>
	(Continued)	

- (j) The county receives a complete Monthly Eligibility Report (CA 7) after the eleventh calendar day of the report month and the county's action to discontinue or decrease aid is a result of the information on the CA 7 or the recipient's failure to submit a timely or complete report of earnings without good cause as specified in Section 40-181.23.

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- (1) Subsection (j) is enjoined by the injunction in Saldivar v. McMahon.

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- (k) The CWD has made a presumption of mismanagement of AFDC funds based upon a recipient's nonpayment of rent.
- (1) A presumption of mismanagement based upon nonpayment of rent includes the inability of a recipient to provide verification that AFDC Homeless Assistance was spent on shelter/housing, in accordance with Section 44-211.514(e).
- .3 If timely notice is not required under the provisions of Section 22-072.2, and the claimant requests a state hearing within ten days of the required adequate notice, aid shall be reinstated retroactively, according to the provisions of Section 22-072.5.
- .31 Aid shall not be reinstated retroactively if the CWD has made a presumption of mismanagement of AFDC funds based on the claimant's nonpayment of rent.
- .4 In computing the notice period required by Section 22-072.1, the 10-day period shall not include the date of mailing, or the date that the action is to take effect.

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**HANDBOOK BEGINS HERE**

- .41 Thus, if the effective date of the action is to be June 1, the notice shall be mailed no later than May 21.

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**HANDBOOK ENDS HERE**



**22-072**      **TIMELY NOTICE - AID PENDING HEARING**  
(Continued)

**22-072**

- .5      Except as provided in Sections 22-054.1 and 22-072.7, when the claimant files a request for a state hearing prior to the effective date of the notice of action, which is subject to Section 22-072.1, aid shall be continued in the amount that the claimant would have been paid if the proposed action were not to be taken, provided the claimant does not voluntarily and knowingly waive aid. This section shall not apply to Greater Avenues for Independence (GAIN) supportive services payments (see Section 42-750.7). In the Food Stamp Program, benefits shall be continued on the basis authorized immediately prior to the notice of adverse action.

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**HANDBOOK BEGINS HERE**

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- .51      **EXAMPLE:** If the notice is mailed on April 20th to be effective May 1st, the request shall be filed before May 1.

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- .52      If the notice proposing action is required to be timely and is not, the request shall be required to be filed before the next date on which the proposed action could become effective based on timely notice.

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- .521      **EXAMPLE:** If the notice is mailed april 21 to be effective May 1, the request must be filed before the next regular benefit issuance date which occurs at least ten days after the April 21 notice.

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**HANDBOOK ENDS HERE**

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- .522      In the Food Stamp Program if a recipient fails to file a request before the effective date of the proposed action, aid pending is appropriate provided the recipient establishes good cause with the Administrative Adjudications Division or the Administrative law Judge (see Section 63-804.613).

- (a)      The criteria for good cause shall be those specified in Section 22-053.16.

<b>22-072</b>	<b>TIMELY NOTICE - AID PENDING HEARING</b>	<b>22-072</b>
	(Continued)	

.6 Aid Pending Hearing

.61 In the Transitional Child Care (TCC) program, benefits shall be paid pending the outcome of a state hearing in the amount requested by the family up to the reimbursement maximum currently approved by the county or actual cost less the family fee, whichever is less, subject to the following conditions:

.611 Benefits paid pending shall not be allowed beyond the TCC eligibility period.

.612 The family has filed for or requested a state hearing within ten calendar days of the notice of action, or within ten calendar days of the date a child care payment is issued when the family is dissatisfied with the amount of the payment.

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**HANDBOOK BEGINS HERE**

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.613 Example: The TCC family was approved for TCC up to a reimbursement maximum of \$275. The TCC family's actual costs less the family fee had been \$250 for the three preceding months. The provider increased the rate to \$300 after deduction of the family fee, but the family still only paid the provider \$250 plus the family fee. The family submits a request for payment in the amount of \$300, after deduction of the family fee. However, the provider signed the request and indicated receipt of payment for the family fee and \$250. The county issues a payment of \$250. the family files for aid paid pending. The county would issue payment of an additional \$25 pending the outcome of the hearing. This is the \$250 originally paid and the additional \$25 which takes the family up to the reimbursement maximum.

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22-072	<b>TIMELY NOTICE - AID PENDING HEARING</b>	22-072
	(Continued)	

.7 Aid pending shall cease when:

- .71 The claimant withdraws or abandons the request for a state hearing (see Section 22-054.2). If the withdrawal is conditional, the county shall provide aid pending retroactively and prospectively if the request for a hearing is subsequently reinstated (see Section 22-054.211, provided that the claimant has complied with conditions set forth in the agreement accompanying the conditional withdrawal.
  - .711 if a nonappearance occurs but the hearing request is subsequently reinstated and the hearing is rescheduled as specified in Section 22-054.22, the county shall reinstate any applicable aid pending.
- .72 The claim has been denied or dismissed by the preliminary hearing process specified in Section 22-074.
- .73 The Administrative Law Judge determines, based on the record of the state hearing, that the issue involved in such hearing is one of law or change in law and not one of incorrect application of law.
  - .731 If the request for hearing involves multiple issues, the Administrative Law Judge shall determine that as to certain issues aid pending is appropriate while as to other issues aid pending is not appropriate. In such cases, aid may be reduced to the extent aid pending is not appropriate.
  - .732 If the matter is rescheduled for further hearing as specified in Section 22-062.13, the aid pending determination made by the Administrative Law Judge at the original hearing shall be considered void. Aid shall be retroactively reinstated and continued in the amount the claimant would have been paid if the proposed action were not to be taken, provided the claimant does not voluntarily and knowingly waive aid.
- .74 The claimant voluntarily and knowingly, in writing, waived the continuation of aid.
  - .741 The county representative shall be permitted to explain to the claimant the right to waive aid pending but shall not be permitted to request such a waiver.

22-072	<b>TIMELY NOTICE - AID PENDING HEARING</b> (Continued)	22-072
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.75 The claimant is granted a postponement of the hearing by the Administrative law Judge at the hearing for a reason that does not constitute good cause as specified in Section 22-053.1.

.751 This provision shall not apply to the Food Stamp Program.

.76 In the Food Stamp Program, the certification period expires (see Section 63-804.642(a)).

.8 After the hearing, and within ten days from receipt of the aid paid pending decision, the claimant or the county may submit a written request to the Administrative Adjudications Division for reconsideration of the aid paid pending decision.

.81 Each party shall be notified of the request and the result of the reconsideration.

.9 Nothing in this chapter shall prohibit the county from instituting any appropriate changes in the recipient's grant while a state hearing is pending, provided that the factual basis of the proposed action is different from the action upon which the recipient is receiving aid pending.

.91 All such actions shall otherwise be subject to the provisions of this chapter.

NOTE: Authority cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10613, 11209, 11501.1(a), 11501.5(a), and 11511(a), Welfare and Institutions Code; 45 CFR 205.10; 45 CFR 255.2(h)(2); 45 CFR 256.2(c); and 45 CFR 256.4(d).

22-073	COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING	22-073
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- .1 Upon receipt of a request for hearing or notice from the Department that a recipient has filed a request for a state hearing, the county shall provide aid pending the state hearing in accordance with Section 22-072, when entitlement exists.
- .11 Such payment shall be either placed in the U.S. Mail or available for hand-delivery to the recipient (if agreed to by the county and recipient) within five working days of the receipt of the hearing request by the appropriate agency as specified in Section 22-004, or the date the regular scheduled aid payment would otherwise have been paid to the recipient, whichever is later.
- .12 If the claimant is not entitled to aid pending the hearing, the county may continue with its proposed action.
  - .121 Unless the evidence indicates otherwise, the receipt date for purposes of providing (issuing) aid paid pending shall be determined as follows:
    - (a) The date the written request is received by the CWD for county administered aid programs or the date the request is received by the Department for all other state aid programs.
    - (b) The date the oral request is received by the Department in Sacramento.
  - .122 The CWD shall compute the five day time limitation for paying aid paid pending from the date:
    - (a) A written request for a state hearing is received by the CWD.
    - (b) The CWD is notified by the Administrative Adjudications Division that it has received a written request for a state hearing.
    - (c) An oral request for hearing is received by the Department in Sacramento.

22-073	COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING (Continued)	22-073
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- .123 Upon receipt of an oral hearing request, the Department shall, within one working day of that receipt, notify the respective county that an oral hearing request has been filed and provide the county with sufficient information to provide aid paid pending when appropriate.
- .124 Misdirected Requests
  - (a) In the event that a written hearing request is filed erroneously with the Administrative Adjudications Division, rather than with the CWD, such requests shall be forwarded to the respective county.
  - (b) For requests filed erroneously in a county in which the claimant does not reside, and in which the CWD has not taken any action or inaction with which the claimant is dissatisfied, these requests shall be forwarded to the Department. The Department shall forward such requests to the proper county as defined in Section 22-001c.(4).
  - (c) The provisions of Sections 22-073.122(a) and (b) shall be applicable to misdirected requests.
- .125 For state aid programs not administered by the CWD, the Department shall issue aid paid pending, when entitlement exists, to a recipient within five working days of the date a written or oral request for a state hearing is received by the Department.
- .13 Each case for which a state hearing request has been filed shall be assigned to a county representative who shall assume the major responsibility for preparing the case in accordance with the requirements of this Division and/or presenting it at the hearing. The county representative shall not have had immediate prior involvement with the case.
- .2 Prior to the hearing, the county representative shall:
  - .21 Determine the issues raised by the hearing request.
    - .211 If the request for hearing does not clearly set forth the claimant's basis for appeal, the county representative shall immediately contact the claimant for clarification.

22-073	COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING (Continued)	22-073
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- .22 After determining the issues, the county representative shall review the applicable statutes, regulations and policies in light of the evidence which exists in the case record.
  - .221 In conducting this initial review, the representative shall contact the eligibility worker and other county personnel as appropriate.
  - .222 When assistance of the Department is required to clarify any questions, such assistance shall be sought without delay.
- .23 After conducting the initial review, the county representative shall make a determination concerning the appropriateness of the county action and the need for and advisability of a hearing. Disagreements and misunderstandings shall be resolved quickly, at the lowest possible administrative level, thereby avoiding unnecessary hearings.
  - .231 If the county representative concludes that the county action was incorrect, the county representative shall contact the claimant and attempt to resolve the case without a hearing.
    - (a) The county representative shall have the authority to make such a decision. The conditional withdrawal procedure described in Section 22-054.21 is usually appropriate in such instances.
  - .232 If the county representative concludes that the county action was correct, the county representative shall contact the claimant and:
    - (a) Inquire if the claimant plans to attend the hearing;
    - (b) Determine if there are any further contentions which the claimant will attempt to raise at the hearing; and

<b>22-073</b>	<b>COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING (Continued)</b>	<b>22-073</b>
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- (c) Provide any and all information which can be of assistance to the claimant in preparing for the hearing. This shall include revealing to the claimant any and all regulations and evidence including that which might be favorable to the claimant's case. The county representative may explain to the claimant the right to withdraw the request for hearing but shall not be permitted to request such a withdrawal. The claimant shall also be informed of the availability of any free legal representation. If the claimant is not fluent in English and if bilingual services apply as specified in Section 21-115, an explanation of the hearing procedures shall be made in the claimant's language.
- .24 The county representative shall determine if an interpreter will be necessary at the hearing or if a home hearing will be necessary.
- .241 The county representative shall notify the Administrative Adjudications Division if the claimant has requested an interpreter or home hearing.
- .242 The county representative shall report without delay to the Administrative Adjudications Division any changes in the claimant's address or any other circumstances which might affect the necessity for or conduct of the hearing.
  - (a) This responsibility to report changes in the claimant's circumstances continues after the hearing until a decision is rendered.
- .243 In the Food Stamp Program if a household requests a state hearing and informs the county that the household expects to leave the State prior to a normally scheduled hearing date, the county representative shall inform the Administrative Adjudications Division so that a hearing date may be scheduled and a decision rendered on an expedited basis.
- .25 Prior to each hearing, the county representative shall prepare a typewritten position statement.



22-073	COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING (Continued)	22-073
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- .251 The position statement shall summarize the facts of the case and set forth the regulatory justification for the county's action.
- (a) If the issue concerns the amount of aid, grant adjustment, or a demand for repayment, the county representative shall include in the position statement a complete final budget computation, month by month, for the period in issue.
  - (b) The county shall include as attachments to the position statement copies of documentary evidence and a list of witnesses which the county intends to use during the hearing.
    - (1) The documents shall be itemized on the last page of the position statement and attached as exhibits.
- .252 If the county has received a 10-day prior notice of the date and time of the scheduled hearing, a copy of the position statement shall be made available to the claimant at the CWD, not less than two working days prior to the date of the scheduled hearing.

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Example:

The hearing is scheduled for Friday. Absent any intervening holidays, the position statement shall be available by the opening of business the preceding Wednesday.

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- .253 If the county, when required, does not make the position statement available not less than two working days prior to the date of the scheduled hearing, or if the county modifies the position statement after providing the statement to the claimant, the hearing shall be postponed upon the request of the claimant conditioned upon the waiver of decision deadlines contained in Section 22-060. A modification is defined as a change which substantively revises the position statement.

22-073	COUNTY WELFARE AGENCY RESPONSIBILITY PRIOR TO THE STATE HEARING (Continued)	22-073
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- .254 A postponement due to the county not making the position statement available within not less than two working days prior to the date of the scheduled hearing or due to the county modifying the position statement after providing the statement to the claimant, shall be considered postponement with good cause. (See Section 22-053.)
- .26 While preparing for the hearing, the county representative shall determine if the presence of the eligibility worker or other county witnesses would be helpful for the resolution of the issue.
- .3 At the hearing, the county representative shall assume full responsibility for presentation of the county's case. Such presentation shall include:
  - .31 Summarizing the written position statement;
  - .32 Presenting the testimony of county witnesses;
  - .33 Cross-examining the testimony of the claimant and the claimant's witnesses;
  - .34 Responding to any questions from the claimant or administrative law judge concerning the case; and
  - .35 Having the county case record available at the hearing. The county representative shall have authority at the hearing to make binding agreements and stipulations on behalf of the CWD.
  - .36 Having the burden of going forward in the hearing to support its determination.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-074	PRELIMINARY HEARING PROCEDURE	22-074
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- .1 The provisions for preliminary hearings set forth herein shall only be utilized by the CWD upon prior written approval of the Administrative Adjudications Division.
  - .11 If such approval has been obtained, a preliminary hearing shall be provided by the county for all state hearing requests concerning actions by that county when the state hearing would be held within that county.
- .2 The preliminary hearing process shall not interfere with the claimant's right to a state hearing.
- .3 Denial or dismissal of a claim by preliminary hearing shall terminate aid pending the state hearing. See Section 22-072.62.
- .4 A preliminary hearing shall neither be required nor available for claimants who have requested a state hearing on an eligibility determination not made by the CWD.
  - .41 For example, a preliminary hearing is not available if the issue is a decision of the Department of Health Services with respect to the scope of Medi-Cal benefits.
  - .42 The preliminary hearing process shall not apply to issues involving the Food Stamp Program.
- .5 With the approval of the Administrative Adjudications Division, the county shall provide preliminary hearings in accordance with the following procedures:
  - .51 A preliminary hearing shall be provided by the CWD to the claimant upon notification by the Administrative Adjudications Division that a request for a state hearing has been filed by the claimant.
    - .511 A state hearing shall be scheduled in the normal manner.
    - .512 The CWD shall conclude the preliminary hearing process prior to the scheduled date of the state hearing.

22-074	<b>PRELIMINARY HEARING PROCEDURE</b> (Continued)	22-074
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- .52 The preliminary hearing shall be conducted by the county hearing officer.
- .521 The county hearing officer shall not later serve as the county representative at a subsequent state hearing involving the case.
- .53 A preliminary hearing may be continued or postponed for the reasons set forth in Section 22-053, provided such continued or postponed preliminary hearing is held prior to the claimant's scheduled state hearing.
- .54 The preliminary hearing shall be held in an office or facility of the CWD. If necessary, the preliminary hearing shall be held elsewhere (see Section 22-045.1).
- .55 The CWD shall mail or deliver to the claimant the county's written notice of the time and place of the hearing not less than seven days prior to the hearing.
- .56 The preliminary hearing shall be conducted under the same general rules and procedures as those set forth in Sections 22-049 and 22-053.2 for the state hearing.
- .561 The provisions of Section 22-050 regarding the introduction, admissibility, and weight of evidence shall apply to the preliminary hearing process.
- .57 The claimant, the authorized representative, or the county may request that the Administrative Adjudications Division or a designee issue a subpoena duces tecum requiring attendance and/or the production of documents, at the preliminary hearing (see Sections 22-051.2 and 22-052).

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-075	DISMISSAL OF A PRELIMINARY HEARING	22-075
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- .1 A preliminary hearing shall be dismissed when:
  - .11 Neither the claimant nor the authorized representative appears at the hearing unless good cause is established under the provisions of Section 22-053.16.
  - .12 The claimant cannot be located through his/her last address of record after notice of the request for state hearing is received by the county.
  - .13 The request for state hearing is withdrawn by the claimant prior to the issuance of the preliminary hearing decision (see Section 22-054.21).
- .2 The CWD shall immediately notify the Administrative Adjudications Division upon dismissing a preliminary hearing on any of the grounds specified in Section 22-075.1, and the county shall immediately implement its proposed action.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-076	PROCEDURE AFTER THE PRELIMINARY HEARING	22-076
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- .1 After closing the hearing, the county hearing officer shall prepare a written memorandum decision setting forth:
  - .11 A summary of facts;
  - .12 The decision on each issue to be considered at the state hearing; and
  - .13 Identification of the regulations supporting the written decision. The written memorandum decision may be informal and need not amount to a full opinion nor contain formal findings of fact and conclusions of law.
- .2 The county shall promptly supply a copy of the written decision to the claimant and to the Administrative Adjudications Division.
- .3 At the time of providing a copy of the decision to the claimant, the county shall determine whether the claimant desires to proceed with the state hearing.

<b>22-076</b>	<b>PROCEDURE AFTER THE PRELIMINARY HEARING</b>	<b>22-076</b>
	(Continued)	

.31 Notice of such determination, including, if the claimant desires to withdraw his/her request, a statement to that effect signed by the claimant or the authorized representative, shall be forwarded to the Administrative Adjudications Division with a copy of the written memorandum decision.

.311 If time limitations prevent the mailing of such notification and decision, the material shall be presented to the Administrative Law Judge at the state hearing for inclusion in the state hearing record.

.4 The county's decision on the issues considered at the hearing shall be implemented immediately.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

<b>22-077</b>	<b>HEARING NOT HELD IN COUNTY RESPONSIBLE FOR AID</b>	<b>22-077</b>
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.1 If the hearing is to be held in a county other than the responsible county, the welfare department of the responsible county shall choose one of the following procedures:

.11 Send a county representative, with the case record and the required position statement, to the hearing.

.12 Submit a written position statement.

.121 Such statement shall include all of the information in the county's possession regarding the point or points at issue, both supporting and opposing its action, together with any relevant dates and any arguments the county desires to make.

.122 The county shall attach all pertinent documents to the position statement.

.123 The position statement shall be signed under penalty of perjury and contain a waiver of procedural defects of proceeding with the hearing in the absence of the county representative.

22-077	HEARING NOT HELD IN COUNTY RESPONSIBLE FOR AID (Continued)	22-077
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- .124 The position statement and pertinent documents shall be mailed at least five days prior to the hearing to the claimant, the authorized representative, and to the place of the hearing with instructions that the statement and attachments be presented to the Administrative Law Judge at the time of the hearing.
- .125 If the county in which the hearing is held does not receive the position statement and attachments from the county of responsibility prior to the hearing, it shall contact the responsible county concerning such position statement and shall attend the hearing on the responsible county's behalf to provide information to the Administrative Law Judge.
- .13 Send the case record, or a certified copy thereof, containing all relevant information in the CWD's possession and the required position statement, to the welfare department of the county in which the claimant is living, with the request that the county represent the responsible county at the hearing.
  - .131 The responsible county shall declare under penalty of perjury that the record submitted is the case record of the claimant.
  - .132 If certified copies of the record are sent instead of the original, the responsible county shall declare under penalty of perjury that the copies are true copies of the original records.
  - .133 The request shall be made in sufficient time to allow the county in which the claimant is living to arrange for representation or to notify the responsible county of its inability to provide such representation. The responsible CWD would then, necessarily follow one of the other two procedures.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

22-078	COMPLIANCE WITH STATE HEARING DECISIONS	22-078
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- .1 Immediately upon receipt of a decision of the Director, the county shall initiate action to comply with such decision.
  - .11 The county shall comply with such decision even if a rehearing is requested.
  - .12 The duty to comply continues if the request for rehearing is granted.
  - .13 If a rehearing is subsequently rendered, the county shall comply with such rehearing decision to the extent it differs from the original decision.
- .2 If the decision of the Director is wholly or partially in favor of the claimant, the county shall, within 30 days of receipt of the decision, submit a compliance report, on a form approved by the Department, to the Administrative Adjudications Division.
  - .21 The compliance report shall set forth the specific manner in which the county has complied and/or is complying with the order in the decision.
  - .22 The compliance report shall explain the claimant's right to contact the Department and the claimant's right to, and procedures for, requesting a state hearing.
  - .23 In the Food Stamp Program, decisions which result in an increase in household benefits shall be implemented according to the provisions of Section 63-804.7.
    - .231 Decisions which result in a decrease in household benefits shall be reflected in the next scheduled issuance following receipt of the hearing decision.
- .3 The claimant may contact the Department, orally or in writing, if he/she is dissatisfied with the compliance.
  - .31 There is no right to a state hearing if the request for hearing is based solely on a compliance issue, i.e., an allegation that the county has failed to comply with a previously adopted state hearing decision. In this situation, the substantive issue has already been resolved and the remaining issue is one of enforcement only.



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(Continued)

- .4 Upon notification that the county has failed to comply with a decision, the Department shall take appropriate action to ensure compliance with such decision.
- .5 The claimant shall be permitted to request a new state hearing concerning his/her dissatisfaction with compliance related issues. See Section 22-001c.(3).

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**HANDBOOK BEGINS HERE**

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- .51 See Section 22-009 for the time limit on requesting a hearing.

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- .52 The time limitations for requesting a state hearing shall not be suspended during the period the Department is reviewing the compliance as specified in Section 22-078.6.
- .53 The county shall send adequate notice regarding compliance related issues resulting from state hearing decisions.
- .6 Upon receipt of the compliance report submitted under Section 22-078.2, the Department shall make a determination regarding the appropriateness of the compliance.
  - .61 If it is determined that the compliance is appropriate, a notification shall be sent to the claimant and the county that the compliance has been approved.
  - .62 If it is determined that the compliance is not appropriate, a notice will be sent to the county with a copy to the claimant, with instructions regarding what steps must be taken to ensure proper compliance with the decision.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553 and 10554, Welfare and Institutions Code.

**22-085 AUTHORIZED REPRESENTATIVE****22-085**

- .1 The claimant may authorize a person to represent him/her during all aspects of the hearing process by signing and dating a written statement to that effect or by stating at the hearing that the person is so authorized. If the claimant is not present at the hearing, the written statement authorizing a representative to act on behalf of the claimant for hearing purposes shall be signed and dated by the claimant on or after the date of the action or inaction with which the claimant is dissatisfied.
- .11 The authorization may be limited in scope or duration by the claimant, and may be revoked by the claimant at any time. The authorization shall be presumed to be a valid authorization. Such presumption is rebuttable.
- .12 If the claimant is not present at the hearing and the written authorization does not meet the requirements set forth in Section 22-085.1, the Administrative Law Judge may proceed with the hearing if the circumstances indicate that the claimant wishes to proceed with the hearing process. In such cases, an amended authorization shall be submitted after the hearing as described in Sections 22-085.22 and .221.

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**HANDBOOK BEGINS HERE**

- .13 The above requirements are for hearing purposes only. For pre-hearing requirements and the release of information to authorized representatives, see Section 19-005.

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**HANDBOOK ENDS HERE**

- .2 If the claimant has not authorized the representative in writing and is not present at the hearing, the person may be recognized as the authorized representative if he/she is an attorney or if, at the hearing, the person swears or affirms under penalty of perjury that the claimant has so authorized him/her to act as the claimant's authorized representative, and the Administrative Law Judge further determines the person is so authorized.
- .21 The Administrative Law Judge may make the determination by contacting a collateral source (e.g., the claimant).

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	(Continued)	

- .22 In all such cases a written authorization shall be submitted within five days from the hearing unless this time period is extended by the Administrative Law Judge.
- .221 If no written authorization is submitted, the case shall be considered abandoned and shall be dismissed by written decision after the hearing. See Section 22-054.
- .23 If, at the hearing, the person cannot swear or affirm under penalty of perjury that the claimant has authorized him/her to act as the claimant's authorized representative because the claimant is incompetent, in a comatose condition, suffering from amnesia or a similar condition, the hearing may proceed at the Administrative Law Judge's discretion if the person is a relative, or a person who has knowledge of the claimant's circumstances and who completed and signed the Statement of Facts on the claimant's behalf.
- .3 Whenever the claimant is represented by an authorized representative, the authorized representative shall be furnished a copy of all notices and decisions concerning the state hearing which are provided to the claimant.
- .4 After a person or organization has been authorized to represent the claimant, the county, after notification of the authorization, shall send copies of any subsequent correspondence that it has with the claimant regarding the state hearing, to the claimant and the authorized representative simultaneously.

NOTE: Authority cited: Sections 10553 and 10554, Welfare and Institutions Code. Reference: Sections 10553, 10554, 10950 and 10955, Welfare and Institutions Code and 45 CFR 205.10.